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Decision 01-07-029 July 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.	Rulemaking 00-10-002 (Filed October 5, 2000)

INTERIM OPINION

1. Summary

This decision addresses recovery of costs for programs adopted in Decision (D.) 01-04-006, and clarifies that cost recovery is provided for through current revenues collected from ratepayers. However, should those revenues be insufficient to fully recover the costs of these programs, any such unrecovered costs can be collected post-rate freeze.

2. Background

On April 20, 2001, Pacific Gas & Electric Company (PG&E) filed and served an emergency petition for modification of D.01-04-006. PG&E seeks an immediate, on-going source of funds for programs adopted in D.01-04-006 through either a surcharge on current rates, or an offset to revenues collected by PG&E on behalf of the California Department of Water Resources (DWR).[1]

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[1] On May 4, 2001, applications for rehearing of D.01-04-006 were filed by Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E). Among other things, applicants raise issues about funding of programs adopted in D.01-04-006. This decision in no way prejudges the disposition of the applications for rehearing.

In support, PG&E asserts that it is a Chapter 11 "debtor in possession" under the United States Bankruptcy Code. As such, PG&E says it is constrained from implementing new programs without concurrent receipt of funds. PG&E estimates that the cost of programs adopted in D.01-04-006 for 2001 alone could be $33 million over and above revenues now authorized in rates.

Further, PG&E states that the funding must not be illusory. Rather, according to PG&E, the Commission must clarify that these costs are not subject to any prohibition on cost recovery after the end of the rate freeze, such as the prohibition PG&E believes was established in D.99-10-057, and affirmed in D.00-03-058.

Pursuant to a shortened comment period, responses to the emergency petition were filed on May 15, 2001 by SCE and the Commission's Office of Ratepayer Advocates (ORA). SCE states its support for modification of D.01-04-006 such that post-rate freeze cost recovery will not be barred by D.99-10-057, D.00-03-058, or related decisions. SCE reports, however, that it does not currently anticipate the need for an immediate surcharge (since incremental revenues may result from the migration of SCE's customers from interruptible to firm service schedules). SCE says if the situation changes, however, it will seek necessary relief at that time. ORA contends PG&E's petition is premature, generally without merit, and should be rejected. On May 18, 2001, PG&E filed and served a reply in opposition to ORA's response.

3. Discussion

We are not persuaded to modify D.01-04-006. Rather, we affirm and clarify our decision.

That is, each respondent utility shall track in a memorandum account all costs and revenues above funds authorized in current rates (i.e., incremental costs and revenues) to implement any order in D.01-04-006. The accounting shall separately identify the cost or revenue associated with each authorized or ordered program, activity, study or report. Utilities may include interest on the balance in each memorandum account. (Ordering Paragraph 15, D.01-04-006, mimeo., pages 102-3, as renumbered by D.01-04-009.)

As also stated in D.01-04-006, the burden to demonstrate reasonableness for cost recovery will be on each respondent utility. We repeat, however, that the bar will be low. Governor Gray Davis proclaimed a State of Emergency within the State of California on January 17, 2001. We expect and believe that each utility will act reasonably and responsibly to assist the State through this crisis. We will review the balance in each memorandum account for reasonableness before authorizing recovery. Except for expenditures resulting from incompetence, malfeasance, or some other unreasonable behavior, full recovery will be authorized of all incremental expenditures by utilities for these programs. (D.01-04-006, mimeo., page 78.)

We continue to decline to add a surcharge. PG&E and SCE rates are currently subject to the electric industry restructuring rate freeze. Our authority to raise rates is limited until we have determined that the rate freeze is over.

Moreover, as a practical matter, a surcharge would be small. It would be approximately $0.0004 for PG&E, and $0.001/kWh for SCE.[2] SDG&E estimates a surcharge would not exceed $0.001/kWh.[3] We do not normally include small, individual surcharges absent extraordinary justification. SCE does not request a surcharge at this time. There is insufficient justification here to warrant a small, individual, limited surcharge.

Further, on the basis of other authority, we recently raised PG&E and SCE rates approximately $2.5 billion annually, or $5.0 billion combined. (D.01-03-082; D.01-05-064, mimeo., page 16.) We decline to again raise rates—even by a small surcharge—

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[2] PG&E's surcharge might be $0.0004/kWh (up to $33 million divided by 82 billion kWh.) (Sources: April 30, 2001 emergency petition for modification, page 2; D.01-05-064, mimeo., page 16 with $2.46 billion divided by $0.03/kWh.) SCE's surcharge might be $0.001/kWh ($275 million capped expenditures less $186 million in current rates, or $89 million, divided by 83.78 billion kWh). (Sources: May 4, 2001 application for rehearing, page 22; D.01-05-064, mimeo, page 16.)

[3] April 2, 2001 Reply Comments of San Diego Gas & Electric Company on the March 16, 2001 Draft Decision of Commissioner Wood, page 2.

until we have an opportunity to consider the effect of these increases in a more comprehensive way on each utility, its customers, and the California economy. We also reject applying a series of small, individual increases. Rather, to the extent rates may need further adjustment, we prefer, where possible, to consider the need on a more thorough, overall, and total basis.

We also decline to adopt PG&E's alternative recommendation, wherein utilities would be authorized to withhold funding for these programs from revenues collected on behalf of DWR. PG&E's proposed language to implement this suggestion is that the Commission "instruct utilities to work with DWR to develop the details of this proposal as an alternative to a surcharge." This proposal is not sufficiently developed to adopt. Rather, the memorandum account as clarified herein provides reasonable assurance of cost recovery, and needs no further development.

We also decline to adopt SCE's proposal to create a balancing account. (May 4, 2001, SCE Application for Rehearing of D.01-04-006, page 23.) No compelling reasons justify balancing, rather than memorandum, account treatment. Moreover, SCE says its proposal assumes concurrent authority for a billing factor or surcharge to amortize the balance, presumably after the rate freeze ends. (May 22, 2001, SCE Comments on Draft Decision of Commissioner Wood, page 3.) Memorandum account treatment, with assurance of cost recovery for reasonable costs after the rate freeze ends, accomplishes the same result.

The fundamental issue is that PG&E and SCE seek assurance that the potential for cost recovery is not illusory. We provide that assurance by clarifying that cost recovery of reasonable balances in each memorandum account is not prohibited by any policies otherwise adopted regarding the end of the rate freeze. This treatment is specific to memorandum account balances resulting from D.01-04-006, and does not disturb our general policy against cost recovery after the rate freeze for costs incurred in any other situation.

We do this in recognition of the dramatic and remarkable events which led the Governor to proclaim a State of Emergency on January 17, 2001. Those events included electricity shortages resulting in blackouts, dramatic increases in electricity prices threatening the solvency of California's major public utilities, and the imminent threat of widespread electricity disruption constituting a condition of extreme peril to the safety of persons and property within the state. (D.01-04-006, mimeo., page 14.)

Based on these and other events, we suspended penalty provisions in interruptible rate tariffs on January 26, 2001 (D.01-01-056), and took a range of other actions on April 3, 2001 to improve the reliability of California's electric system (D.01-04-006). Our decisions would not have been necessary absent the electric system operating outside otherwise reasonable bounds. (D.01-04-006, mimeo., page 14.)

We determined that current conditions were seriously jeopardizing the health, safety and welfare of every Californian, and might continue to do so for the foreseeable future. (D.01-04-006, mimeo., page 78.) As a result, we directed utilities to immediately implement programs authorized in D.01-04-006 as part of their public utility obligations and responsibilities. (Ordering Paragraph 15, D.01-04-006, as renumbered by D.01-04-009.) We did this to improve the reliability of California's electric system for the near term, particularly for Summer 2001.

We stated in our April 2001 order that respondent utilities are assured of cost recovery absent incompetence, malfeasance, or other unreasonable behavior. We reaffirm that statement now.

For the reasons explained in both our April decision and here, we decline to raise rates now on a piecemeal basis. Nonetheless, we consider all expenses incurred to implement any program, activity, study or report authorized or ordered in D.01-04-006 to be part of each utility's normal cost of service revenue requirement incurred as part of each utility's public utility obligations and responsibilities. We recognize that existing rates recover about $220 million per year in interruptible programs costs (D.01-04-006, mimeo. page 3). Depending upon the ultimate need and success of programs authorized and ordered in D.01-04-006, utility expenditures may increase. Absent additional authorization, however, we limited total expenditures by the three respondent utilities to $500 million per year, so that these costs would not themselves get outside just and reasonable bounds and potentially cause the same harm to public health, safety and welfare caused by the dysfunctional wholesale market itself. (D.01-04-006, mimeo., page 74, and Ordering Paragraph 16, as renumbered by D.01-04-009.)

We did not take these actions with the idea that we would later prevent utilities from recovering reasonably incurred incremental costs as utilities honor and implement our orders to assist California through this energy crisis. Therefore, we reaffirm and clarify that upon a finding of reasonableness, balances in each memorandum account incurred for programs, activities, studies and reports authorized and ordered pursuant to D.01-04-006 will be recovered from ratepayers without respect to any policies otherwise in place regarding the end of the rate freeze. This treatment is specific to memorandum account balances resulting from D.01-04-006, and does not disturb our general policy against cost recovery after the rate freeze for costs incurred in any other situation.

This cost recovery after the end of the rate freeze is for specific programs that are necessary to respond to the energy crisis. This is not inconsistent with rate freeze restrictions mandated by Assembly Bill (AB) 1890. The programs adopted in D.01-04-006 specifically address an energy crisis not contemplated by the Legislature when it enacted the rate freeze provisions of AB 1890. Further, these actions promote the Legislature's recent efforts to address the energy crisis.

To facilitate future reasonableness reviews, we adopt ORA's recommendation that each respondent utility include within its report on demand-side management programs a report on interruptible programs and implementation of curtailment priorities, including costs and revenues. The memorandum account balances should then be reviewed in each respondent utility's Annual Earnings Assessment Proceeding (AEAP).

4. Need for Expedited Consideration

Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure provides in relevant part that:

> "…the Commission may reduce or waive the period for public review and comment under this rule…for a decision where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public

> review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period…would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.“

PG&E initially asked that the Commission rule on its petition within three days of the date it was filed.

We balance the public interest in quickly amending D.01-04-006 against the public interest in having a full 30-day comment cycle on the proposed amendment. We conclude that the former outweighs the latter. We must respond quickly to provide additional assurance of cost recovery so that respondent utilities may successfully implement the orders in D.01-04-006. Failure by respondent utilities to fully implement the orders in D.01-04-006 jeopardizes public health and safety by significantly increasing California’s exposure to rolling blackouts in Summer 2001. We seek valuable public review and comment of our proposed change, and find that a reduced period balances the need for that input with the need for timely action before Summer 2001.

5. Comments on Draft Decision

On May 18, 2001, the draft decision of Assigned Commissioner and Presiding Officer Wood on this matter was mailed to parties in accordance with Section 311(g) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on May 22, 2001 by PG&E, SCE, SDG&E, and ORA. No reply comments were served by 1:00 p.m. deadline for such comments.

We issue today’s order based on the emergency petition, responses to the petition, related documents cited herein, plus comments and reply on the Draft Decision. With service of the Draft Decision, parties who believed hearings were necessary or required were advised to move for evidentiary hearing by the date comments were due. Motions were required to identify the exact alleged factual issue in dispute, show that it is material and relevant, and state what evidence would be offered at hearing. No party requested evidentiary hearing.

Findings of Fact

1. Incremental costs incurred by respondent utilities to implement orders adopted in D.00-01-004 are part of each utility's cost of service revenue requirement incurred as part of each utility's public utility obligations and responsibilities.

2. Commission authorizations and orders in D.01-04-006 were not made with the idea that utilities would later be prevented from recovering reasonably incurred costs as utilities honor and implement Commission orders to assist California through this energy crisis.

3. The public interest in quickly affirming and clarifying D.01-04-006 so that cost recovery can be addressed for Summer 2001 outweighs the public interest in a full 30-day public review and comment of the proposed amendment.

Conclusions of Law

1. Upon a finding of reasonableness, balances in each memorandum account incurred for programs, activities, studies and reports authorized and ordered pursuant to D.01-04-006 should be recovered from ratepayers without respect to any policies otherwise in place regarding the end of the rate freeze.

2. Recovery of memorandum account balances resulting from D.01-04-006 should be allowed because of the energy crisis and unique costs incurred pursuant to D.01-04-006 to address the crisis, with this treatment not disturbing our general policy against cost recovery after the rate freeze for costs incurred in any other situation.

3. Respondent utilities should report on interruptible programs and curtailment priorities as part of their reports on demand-side management programs, and balances in each memorandum account should be reviewed in the AEAP.

4. The period for public review and comment on the draft decision should be reduced, pursuant to Rule 77.7(f)(9), as we balance the need to quickly clarify D.01-04-006 against the public interest in a full 30-day public review and comment period.

5. This order should be effective today so that any potential threat to public health and safety by respondent utilities failing to fully implement the orders in D.01-04-006 can be addressed immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The April 30, 2001 emergency petition for modification of Decision (D.) 01-04-006 filed by Pacific Gas & Electric Company (PG&E) is granted to the extent provided herein, and denied in all other respects.

2. D.01-04-006 is modified as follows:

   a. Conclusion of Law 53 is replaced with:

      "53. Each respondent utility should establish a memorandum account to track all dollars it spends and receives above funds authorized in current rates to implement any decision in today's order regarding interruptible programs and curtailment priorities and, upon a finding of reasonableness, balances in each memorandum account should be recovered from ratepayers without respect to any policies otherwise in place regarding the end of the rate freeze."

   b. Ordering Paragraph 15 (as renumbered pursuant to D.01-04-006) is modified by adding this sentence at the end:

      "Upon a finding of reasonableness, balances in each memorandum account shall be recovered from ratepayers without respect to any policies otherwise in place regarding the end of the rate freeze. Memorandum account balances shall be reviewed in each utility's Annual Earnings Assessment Proceedings."

3. Respondent utilities shall report on interruptible programs and curtailment priorities as part of their reports on demand-side management programs, and memorandum account balances for interruptible programs and curtailment priorities shall be reviewed in the Annual Earnings Assessment Proceeding.

4. This rulemaking proceeding remains open.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ HENRY M. DUQUE
Commissioner

I will file a dissent.

/s/ RICHARD BILAS
Commissioner

R.00-10-002
D.01-07-029

Commissioner Bilas, dissenting:

Although I want to see these programs go forward, I am opposed to this decision on principle because it is inconsistent with its companion decision on the AB 970 programs in Rulemaking 98-07-037 (Decision 01-07-028). I received the substantially revised proposed D.01-07-028 this morning. There was no opportunity for a meaningful comparison of the two decisions prior to the Commission meeting. This revised proposed decision came this morning along with two other substantially revised decisions and a resolution with massive unmarked revisions that was thereafter revised. Review of proposed decisions and resolutions under such circumstances cannot be meaningful for a Commissioner. A prior brief synopsis on the broad approach to be taken is not sufficient information upon which to base a vote on a decision either. Sadly, this course of decisionmaking is becoming the rule rather than the exception here. The revised proposed decision should have tracked the substantially revised companion D.01-07-028 and set forth a new scenario for a balancing account and recovery of program expenses extending after the rate freeze is over. Instead, it allows recovery after the rate freeze is over but permits only a memorandum account. The rationale for the difference is not apparent to me. Whether the recovery is accomplished through a balancing account or memorandum account, there is insufficient comment on whether either of these recovery scenarios is a workable scenario and whether they should have been consistent. I am not sure whether use of a memorandum account here rather than a balancing account will, in fact, resolve the funding concerns keeping these vital programs from moving forward.

Second, and most importantly, I disagree with the majority's conclusion that the rate freeze is not over, and therefore we cannot institute a surcharge for these programs. This rationale totally ignores the two prior surcharges assessed by this Commission. It also ignores the Department of Water Resources as a funding source from the revenues it will receive under prior Commission decisions. It also totally ignores reality. Common sense and our audits of the utilities make it abundantly clear that in reality the rate freeze is over, in fact was over long ago. If this Commission does not soon place a decision declaring the rate freeze to be over on its agenda, I will sponsor one.

Therefore, I respectfully dissent.

/s/ RICHARD A. BILAS
RICHARD A. BILAS
Commissioner

San Francisco, California
July 12, 2001